

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 871 of 1992

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

LAXMIPRASAD HIRABHAI SHARMA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 871 of 1992
MS ROOPAL R PATEL for Petitioner
MR AJ DESAI AGP for Respondents
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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date of decision: 17/09/2004

ORAL JUDGEMENT

Learned advocate Ms. Patel seeks leave to delete

reference made to the Labour Legislation and the claim made under it pursuant to the permission granted by order dated 12th February, 1992 [Coram : Hon'ble Messrs. Justice A.P Ravani & C.K Thakkar, as they then were]. Leave is granted. The relevant part of the petition be deleted, pursuant to the aforesaid order dated 12th February, 1992, within ten days from today.

The petitioner seeks reinstatement in service as daily wage employee.

The petitioner claims that he was engaged by the Deputy Executive Engineer, Water Supply, R&B Sub-Division as Guard on daily wages. The petitioner was practically engaged everyday from 21st October, 1988 till 30th June, 1990. During the said period, the petitioner had served for 491 days. On completion of 240 days' service, as the petitioner raised a demand for paid holiday, the petitioner's service was terminated on 30th June, 1990 by oral instruction. Feeling aggrieved, the petitioner has preferred the present petition and has claimed reinstatement in service and arrears of wages.

Learned advocate Mr. Patel has submitted that many daily wage employees junior to the petitioner were continued even after 30th June, 1990. It is submitted that the petitioner had been making oral representations. Since the said representations were not considered, the petitioner made written representations on 29th October, 1991 and 13th January, 1992. Learned advocate Ms. Patel has relied upon the said representations and the communication dated 24th July, 1991 and the Office Order No. 1928 of 1991. She has submitted that the aforesaid communication and the order specifically refers to the entitlement of the daily wage workmen to paid-holidays after completion of one year's service. The statement annexed to the said communication includes the name of the petitioner. In her submission, the conjoint reading of the aforesaid representations, the communication and the order prove that the petitioner's service was terminated by oral instruction. She has also submitted that since the termination of service of the petitioner, some more workmen were engaged on daily wages. She has, therefore, submitted that the termination of service of the petitioner is contrary to Articles 14 and 16 of the Constitution of India.

The petition is contested. The Deputy Executive Engineer, Water Supply, R & B Sub-Division has made counter affidavit. It is not denied that the petitioner was engaged on daily wages from 21st October, 1988. It

is not disputed that the petitioner had worked for 491 days till 30th June, 1990. However, it is specifically denied that the service of the petitioner was terminated on 30th June, 1990; as alleged. It is stated that since 30th June, 1990, the petitioner ceased to report for duty of his own volition.

I am unable to agree with learned advocate Ms. Patel. On perusal of the aforesaid representations, communication and the office order, it is not possible to cull that the petitioner's service was terminated on 30th June, 1990 by oral instructions, as alleged. On the contrary, inclusion of petitioner's name in the list of daily wage workmen in communication dated 29th October, 1991 and the Office Order No. 1928 of 1991 would indicate that after 30th June, 1990, the petitioner's name was continued on the muster role. This would suggest that petitioner's service was not terminated, as alleged.

In view of the disputed question of facts involved in the present case, the petition is dismissed. Rule is discharged. The parties shall bear their own cost.

{Miss R.M Doshit, J.}

Prakash*